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10/067,440	02/05/2002	John K. Newton		7397

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EXAMINER
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LAstra, DANIEL

ART UNIT	PAPER NUMBER
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3688

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/067,440	<b>Applicant(s)</b> NEWTON ET AL.	
	<b>Examiner</b> DANIEL LASTRA	<b>Art Unit</b> 3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-10,12,13,15-19 and 22-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-10,12,13,15-19 and 22-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 1, 4-10, 12, 13, 15-19, 22-35 have been examined. Application 10/067,440 (METHOD TO MANAGE MARKETING AND SALES DATA OF E-COMMERCE CLIENTS) has a filing date 02/05/2002.

### **Response to Amendment**

2. In response to Non Final Rejection filed 11/28/2007, the Applicant filed an Amendment on 05/16/2008, which amended claims 1, 6, 23, cancel claims 3, 20, 21 and added new claims 24-35.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 4-10, 12, 13, 15-19, 22-35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here the claims fail to

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meet the above requirements because the steps are neither tied to another statutory class of invention (such as a particular apparatus).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, recites the limitation "by the team members". Claim 18 recites "said tracked".

There is insufficient antecedent basis for these limitations in the claims.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 6-9, 12, 13, 15-19 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Sash (US 2005/0075925).

Claim 6, Sash teaches:

A method for a marketing network service to generate and manage sales and marketing information for service members comprising:

(a) subscribing to a marketing network service to be a new member communicatively linked to the recruiting up-line team member(s), where the new member and the recruiting up-line team member(s) from a hierarchical relationship between one another within the marketing network service (see paragraph 128, 130 “refer a friend”). In Sash, a member recruits other contacts by sending said contacts a referring email.

b) training the new member through the marketing service where the training progress is tracked by the up-line team member(s), and where the new member is trained to utilize the marketing service and to bring a Web site user to a Web site hosted by either the new member or the up-line team member(s) (see paragraph 98; see figure 27c “if you’re interested you can visit their website at [www.merchant.com](http://www.merchant.com));

(c) bringing business to the Web site presenting goods and/or services on the marketing network service computing platform (see paragraph 128 “marketing websites”);

(d) obtaining personal information from the Web site user (see figure 17b);

(e) capturing a user experience from the Web site user (see figure 27b);

(f) detecting the departure of the Web site user from the Web site (see paragraph 129);

(g) generating a contact report, where the contact report comprises a neuro dynamic profile and identified interests of the Web site user (see figure 27a,b);

(h) notifying the new member *and the up-line member(s)* of a business contact by *sending* the contact report through *at least one of* e-mail, posted mail and telephone (see paragraph 128, 129);

(i) accessing a data managing program to retrieve or input data (see paragraph 128);

(j) monitoring the contact report and activity of the new member (see figure 27b);  
and

(k) using contact report by the up-line member(s) and the new member (see figures 27a,b).

Claim 7, Sash teaches:

A method as claimed in claim 6 where said bringing business comprises inviting traffic based on purchased leads given or sold to said marketing network service and inviting traffic through promotion of the Web site through, newspapers, flyers, Web advertisements and Web links (see paragraph 128).

Claim 8, Sash teaches:

where said obtaining comprises the Web site user signing a guest book with personal information (see figure 17b).

Claim 9, Sash teaches:

where said personal information comprises the Web site user's name, e-mail address, correspondence address and telephone number (see figure 17b).

Claim 12, Sash teaches:

where said neuro dynamic profile and said interests are derived from said personal information and said Web site user experience (see figure 27b; paragraph 128-129).

Claim 13, Sash teaches:

where said neuro dynamic profile is characterized to by personality type, communication style, motivation strategy and decision strategy (see figure 27b).

Claim 15, Sash teaches:

where said monitoring further comprises monitoring by the up-line team members) to determine the activity status of a down-line member, motivate the down-line member and to determine to collaborate with the down-line member regarding the contact report (see paragraph 127, 129 “reviewing particular person's detailed history in order to decide to contact a member”).

Claim 16, Sash teaches:

where said using the information by the service members comprises evaluation of the contact report by the team members to form a guest response that is psychologically effective to encourage sales (see paragraph 129 “reviewing feedback so better decide if the member should target a contact or not”).

Claim 17, Sash teaches:

where said using further comprises providing information to the Web site user, transacting a sale of goods and/ or services with the Web site user and accepting subscription of the Web site user to the marketing network service (see paragraphs 127 and 130).

Claim 18, Sash teaches:

where said communicatively linked and said monitoring and said tracked comprises a flow of business information between the new member and the appropriate up-line team member(s) is facilitated by a Teamwork Communication System (see paragraph 114).

Claim 19, Sash teaches:

where said data management program is a Contact Manager program governed by the marketing network service (see paragraph 114).

Claim 22, Sash teaches:

where said marketing network service follows said Web site user to any other Web site that said Web site user visits throughout the internet after said Web site user exits said Web site of said new member or said up-line team member(s) (see paragraph 129 “when Sarah leaves the merchant’s website”)

### **Claim Rejections - 35 USC § 103**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 10 and 23-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sash (US 2005/0075925) in view of Herz (US 5,724,521).



Claim 1, Sash teaches:

A method for a marketing service to generate and manage sales and marketing information for service members comprising:

(a) *identifying a guest (see figure 17b) considering an offer for goods and/or services on a website of a down-line member, wherein the down-line member is linked with one or more up-line members in a hierarchical marketing network (see paragraphs 128-129);*

(c) *creating a neuro dynamic profile particular to the guest based on activity of the guest on the website of the down-line member, where the neuro dynamic profile is characterized by personality type, communication style, motivation strategy and decision strategy (see figure 27b). Sash teaches that Katie Rose Jones has an intelligent personality that likes books and shows, likes to communicate using visual feedbacks, also has a decision strategy of based decision on reviews from others and also has a motivation strategy of receiving pleasure from her actions (see figure 27b).*

(d) *creating a contact report comprising an identification of the guest, viewing activity of the guest on the website of the down-line member and neuro dynamic profile particular to the guest (see figure 27a; paragraph 128);*

(e) *storing the contact report under a contact management program file (see figure 27a);*

(f) *moving the contact report to the down-line member and one or more of the up-line members (see paragraph 127); and (g) using the contact report by the down-line*

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*member and one or more up-line members to directly market to the guest by at least one of a telephone call and a face to face meeting (see paragraph 128).*

Sash does not expressly teach (b) tracking viewing activity of the guest *on the website of the down-line member*. However, Herz teaches that it is old and well known in the promotion art to track a user online viewing history (see col 9, lines 25-50). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sash would track a user's online viewing history in order to better target promotions to said user, as it is old and well known to do so, as taught by Herz.

Claim 4, Sash teaches:

where said moving the information comprises data management provided by the Teamwork Communication System governed by the marketing service (see paragraph 114).

Claim 5, Sash teaches:

where said using the information by the service members comprises evaluation of the contact report by team members to form a guest response that is psychologically effective to encourage guest activity or sales (see paragraph 129). Sash reviewed the product history of a contact in order to determine if Sash would target promotions to said contact or not.

Claim 10, Sash fails to teach:

where said Web site user experience comprises the length of time the user visited the site, what site pages were viewed and the length of time each page was

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viewed. However, Herz teaches that it is old and well known in the promotion art to track a user online viewing history (see col 9, lines 25-50). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sash would track a user's online viewing history in order to better target promotions to said user, as it is old and well known to do so, as taught by Herz.

Claim 23, Sash teaches:

A method for a marketing network service to generate and manage sales and marketing information for service members comprising:

(a) subscribing to a marketing network service to be a new member communicatively linked to a recruiting up-line team member(s), wherein the new member and the recruiting up-line team member(s) form a hierarchal relationship between one another within the marketing network service and where said communicatively linked comprises a flow of business information between the new member and the appropriate up-line team member(s) is facilitated by a Teamwork Communication System (see paragraph 90);

(b) training the new member through the marketing service where the training progress is tracked by the up-line team member(s) and where the new member is trained to utilize the marketing service and to bring a Web site user to a Web site hosted by either the new member or the up-line team member(s) (see paragraph 98; figure 27c "if you're interested you can visit their website at [www.merchant.com](http://www.merchant.com));

(c) bringing business to the Web site presenting goods and/or services on the marketing network service computing platform (see figure 27c);

(d) obtaining personal information from the Web site user (see figure 17b);

(e) tracking viewing activity of the Web site user considering an offer for goods and/or services (see figure 30b). Sash teaches tracking if a user purchased a product in a website.

(g) detecting the departure of the Web site user from the Web site (see paragraph 129 “when Sarah leaves the merchant’s website”);

(h) generating a contact report, wherein the contact report comprises a neuro dynamic profile particular to the Web site user and where the neuro dynamic profile is characterized by personality type, communication style, motivation strategy and decision strategy and where the personality types include aggressiveness, patience, intelligence and practicality, where the communication style includes a predilection to information presented in a visual, auditory, kinetic or analog/digital fashion, where the motivation strategy includes the Web site users tendency to move away from pain or to move toward pleasure and wherein the decision strategy includes the Web site users tendency to collect and base a decision based on reviews from others or internalize the product/service information for self-determination. Sash teaches that Katie Rose Jones has an intelligent personality that likes books and shows, likes to communicate using visual feedbacks, also has a decision strategy of based decision on reviews from others and also has a motivation strategy of receiving pleasure from her actions (see figure 27b).

(i) notifying the new member of a business contact by receiving the contact report (see paragraph 127);

(j) accessing a data managing program to retrieve or input data, where the data managing program is comprised of a Contact Manager program governed by the marketing network service (see paragraph 127-129);

(k) monitoring the contact report and activity of the new member, where the monitoring further comprises monitoring by the up-line team member(s) to determine the activity status of the new member, motivate the new member and to determine to collaborate with the new member regarding the contact report (see paragraph 127); and

(l) using the information by the service members, where the service members comprise the up-line team member(s) and the new member and where said using the information by the service members comprises evaluation of the contact report by the team members to form a guest response that is psychologically effective to encourage sales and where said using further comprises providing information to the Web site user, transacting a sale of goods and/or services with the Web site user and accepting subscription of the Web site user to the marketing network service (see paragraph 129 “reviewing feedback report in order to decide if a contact would be targeted with promotions”).

Sash fails to teach (f) capturing a user experience from the Web site user, where the user experience of the Web site user comprises the length of time the user visited the site, what site pages were viewed and the length of time each page was viewed. However, Herz teaches that it is old and well known in the promotion art to track a user online viewing history (see col 9, lines 25-50). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that

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Sash would track a user's online viewing history in order to better target promotions to said user, as it is old and well known to do so, as taught by Herz.

Claim 24, Sash teaches:

A method for marketing to potential members of a multi-level marketing network, the method comprising the steps of:

providing a multi-level marketing network ("MLM") with a plurality of members cooperating in a hierarchical manner, wherein the MLM includes an up-line member that is linked to a down-line member in the MLM (see paragraph 129);

directing a potential member of the MLM to access a personalized website of the down-line member, wherein the down-line member requested the potential member to access the personalized website of the down-line member (see paragraph 129);

receiving an identification of the potential member (see paragraph 129);  
presenting one or more presentations to the potential member via the personalized website of the down-line member, wherein each of the presentations last a predetermined time period (see paragraph 129);

sending the identification of the potential member and information gathered in the tracking step to the down-line member and the up-line member; and  
marketing directly to the potential member by a collaborative effort of the up-line member and the down-line member, wherein the up-line member and the down-line member market membership in the MLM to the potential member (see paragraphs 128-129).

Sash fails to teach presenting multimedia presentations to potential members and tracking which of the presentations were viewed by the potential member and the amount of time that the potential member viewed each of the presentations. However, Herz teaches that it is old and well known in the promotion art to track a user online viewing history (see col 9, lines 25-50). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sash would track a user's online viewing history in order to better target promotions to said user, as it is old and well known to do so, as taught by Herz.

Claim 25, Sash teaches:

where the identifying step includes receiving identifying information about the potential member from a guest book associated with the personalized website of the down-line member (see paragraph 129).

Claim 26, Sash teaches:

where the potential member is identified based on a link used by the potential member to access the personalized website of the down-line member (see paragraph 98).

Claim 27, Sash teaches:

wherein the marketing step includes a telephone call to the potential member by at least one of the up-line member and the down-line member (see paragraph 128).

Claim 28, Sash does not expressly teach:

wherein the marketing step includes a three-way call to the potential member by the up-line member and the down-line member. However, Official Notice is taken that it

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is old and well known in the communication art to make a three-way call via a telephone. There it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that potential members would contact the persons who send them referral emails, as taught by Sash (see paragraph 127 and 128) via three-way call as it is old and well known to do so.

Claim 29, Sash teaches:

wherein the up-line member recruited the down-line member into the MLM (See paragraph 98).

Claim 30, Sash teaches:

generating a neuro dynamic profile of the potential member based on activities of the potential member on the personalized website of the down-line member (see figure 27b).

Claim 31, Sash teaches:

wherein the neuro dynamic profile includes at least one of personality type, communication style, motivation strategy and decision strategy of the potential member (see figure 27b).

Claim 32, Sash teaches:

wherein the communication style is determined based on whether the potential member shows a predilection to information presented in a visual, auditory, kinetic fashion on the website of the down-line member. Sash teaches that Katie Rose Jones has an intelligent personality that likes books and shows, likes to communicate using visual feedbacks, also has a decision strategy of based decision on reviews from others



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and also has a motivation strategy of receiving pleasure from her actions (see figure 27b).

Claim 33, Sash teaches:

wherein the motivation strategy is determined based on whether the potential member has a tendency to move toward information presented from a standpoint of pain on the website of the down-line member (see figure 27b). Sash teaches that Katie Rose Jones has a motivation strategy of receiving pleasure and not pain from her actions (see figure 27b "Great Show" "loved it").

Claim 34, Sash teaches:

wherein the motivation strategy is determined based on whether the potential member has a tendency to move toward information presented from a standpoint of pleasure on the website of the down-line member. Sash teaches that Katie Rose Jones has a motivation strategy of receiving pleasure and not pain from her actions (see figure 27b "Great Show" "loved it").

Claim 35, Sash teaches:

wherein the decision strategy is determined based on the potential member's tendency to base a decision on the website of the down-line member from information of others or internalizes information for self determination.

### ***Response to Arguments***

6. Applicant's arguments filed 08/21/2007 have been fully considered but they are not persuasive. The Applicant argues that Sash does not teach "hierarchical relationship" because in the hierarchy, according to the Applicant, the new member may

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need help from the more experienced up-line member to “close the deal” with a potential prospect and the Applicant argues that said limitation is taught in claim 6 steps h and k. The Examiner answers that the Applicant is arguing about limitation not stated in the claim. Claim 6 steps h and k simply teaches sending contact information to members and that is all. Sash teaches a referral relationship between members (see paragraph 98) and also Sash teaches that potential members are able to contact members in order to obtain more information about products or services and/or how to become members (see paragraph 98 and 117). Therefore, Sash teaches Applicant’s claimed limitation.

The Applicant argues that Sash does not teach a “neuro dynamic profile”. The Examiner answers that Sash teaches obtaining profile information from users by for example teaching that Katie Rose Jones has an intelligent personality that likes books and shows, likes to communicate using visual feedbacks, also has a decision strategy of based decision on reviews from others and also has a motivation strategy of receiving pleasure from her actions (see figure 27b) and that a member (i.e. “referrer”) uses said profile in order to determine which users would be targeted with promotions (see paragraph 129). Therefore, contrary to Applicant’s argument, Sash teaches Applicant’s claimed invention.

The Applicant argues that Sash does not teach “neuro dynamic profile” and that the Examiner is using “impermissible hindsight”. The Examiner answers that defining a “neuro dynamic profile” as communication style, motivation strategy and decision strategy” is extremely broad and therefore, contrary to Applicant's argument, the

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Examiner does not need hindsight to make the rejection due to the broadness of the limitation.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James W. Myhre can be reached on (571)272-6722. The official Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/  
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August 25, 2008.